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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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| RANDY SPENCER,<br><br>v.<br><br>STATE OF UTAH, et al.,<br><br>Defendants. | <b>REPORT AND RECOMMENDATION</b><br><br>Case No.2:18cv645-TS-BCW<br><br>District Judge Ted Stewart<br><br>Magistrate Judge Brooke Wells |
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This case is referred to the undersigned by District Judge Ted Stewart in accordance with 28 U.S.C. § 636(b)(1)(B).<sup>1</sup> In August 2018, the court granted Plaintiff Randy Spencer's (Plaintiff) request to proceed in *forma pauperis*.<sup>2</sup> The basis of this action are Plaintiff's allegations that Defendants engaged in violations of 42 U.S.C. §1983 when they denied him medical treatment, specifically surgery to repair carpal tunnel syndrome.<sup>3</sup> Plaintiff filed two motions: a Motion for Service of Process<sup>4</sup> and 2) a Motion for Extension of Time to Serve.<sup>5</sup> The court denied the Motion for Service of Process and granted the Motion for Extension of Time.<sup>6</sup> Accordingly, Plaintiff was given an additional 30-days, until December 21, 2018, to effectuate service on the Defendants.<sup>7</sup>

In its order the court notified Plaintiff that "[i]f service is not executed by then, the court will have no choice but to comply with Rule 4(m)."<sup>8</sup> As of today, January 4, 2019, no proof of

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<sup>1</sup> ECF No. 4.

<sup>2</sup> ECF No. 2.

<sup>3</sup> ECF No. 3.

<sup>4</sup> ECF No. 5.

<sup>5</sup> ECF No. 6.

<sup>6</sup> ECF No. 7.

<sup>7</sup> See *id.*

<sup>8</sup> *Id.*

service has been filed with the court. Thus, pursuant to Rule 4(m) since the 90-day deadline to effectuate service has expired, and Plaintiff appears to not have effectuated service pursuant to the extension granted by the court, the court hereby RECOMMENDS that the action be dismissed without prejudice.

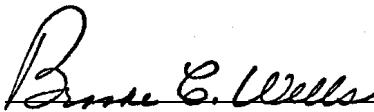
### **CONCLUSION AND RECOMMENDATION**

Based on the foregoing, IT IS HEREBY RECOMMENDED that Plaintiff's Complaint be dismissed without prejudice.

### **NOTICE**

Copies of this Report and Recommendation are being sent to Plaintiff who is hereby notified of his right to object. Within fourteen (14) days after being served with a copy, Plaintiff may serve and file written objections to such proposed findings and recommendations as provided by rules of Court. Any objection must be filed within this deadline. Failure to object may constitute a waiver of objections upon subsequent review.

DATED this 4 January 2019.



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Brooke C. Wells  
United States Magistrate Judge